

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In The Matter of)

Preemption of Local Zoning Regulation)
of Satellite Earth Stations)

) IB Docket No. 95-59
)

To: The Commission

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**REPLY COMMENTS
OF
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

**NATIONAL RURAL
TELECOMMUNICATIONS
COOPERATIVE**

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Dated: August 15, 1995

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Pursuant to Section 1.430 of the Rules and Regulations of the Federal Communications Commission ("Commission"), the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments to the Notice of Proposed Rule Making ("Notice") concerning the Commission's proposal to expand federal preemption of local zoning regulations which affect satellite earth stations.^{1/}

I. PRELIMINARY STATEMENT

1. Through the use of satellite distribution technology, NRTC provides rural Americans an affordable source of information and entertainment. NRTC believes that rural Americans are entitled to the same benefits of quality programming

^{1/} Notice of Proposed Rule Making ("Notice"), 60 Fed. Reg. 28077 (released May 15, 1995).

as their urban counterparts. For NRTC and similarly situated entities, however, local zoning regulations often impose unreasonable barriers to the provision of satellite-based services. These barriers increase the cost and decrease the availability of satellite-based programming for rural Americans. They also restrict the development and growth of competition in the delivery of multichannel video programming.

2. In Comments filed in this proceeding, NRTC expressed its strong support for the Commission's proposal to revise its rules governing federal preemption of local zoning regulations which concern satellite earth stations. NRTC explained that the satellite industry would benefit greatly from these proposed rule changes. Too many local zoning boards have adopted unreasonable restrictions that have come at the expense of both the public interest in the open exchange of ideas and the private rights of consumers to competitive programming choices. NRTC commends the Commission for acting to protect receive-only satellite antennas against unreasonable local zoning restrictions.

II. REPLY COMMENTS

3. NRTC joins with the many parties who expressed their support for the revised rules proposed by the Commission. See, e.g., ACS Enterprises, Inc. at 1; SBCA at 52; USSB at 9. The Commission's proposal correctly balances the narrow interests of local zoning authorities with the considerable interests of citizens, consumers and satellite service providers.

4. In order to ensure that this equilibrium is genuinely attained, NRTC urges the Commission to amend its proposal in a few minor ways. Under the proposed rules, the Commission will examine for preemption only those regulations that impose "substantial costs" on satellite antennas or "substantially" limit reception by such antennas. Notice, at ¶ 46. The Commission noted that the "substantial" test is met if "a federal interest has been burdened in a way that is not insignificant, and which therefore calls for justification."^{2/} NRTC applauds this proposal because it correctly recognizes the negligible health, safety and aesthetic impact of modern technologies, such as the small DBS dishes, upon commercial and residential areas.

5. NRTC points out, however, that a fee or application processing procedure which a commercial customer might not consider to be significant could in fact be a barrier to the average consumer, who generally has less resources than a typical commercial customer. Therefore, NRTC endorses DIRECTV's suggestion that the Commission clarify "substantial" as it pertains to consumers to include imposition of any costs or fees, being required to obtain a permit, or having to attend a hearing or meeting of any kind. DIRECTV at 4-5. In this way, local authorities would not be able to impose unreasonable zoning restrictions against consumers under the guise of permit costs or procedural hurdles.

^{2/} Notice, at ¶ 58.

6. NRTC similarly endorses the suggestion of GE American Communications Inc. ("GE") that the proposed calculation of "substantial costs" should include the costs of any shielding requirements, such as fencing, walls, etc. GE at 11. Without such a modification to the Commission's proposal, local zoning authorities could effectively circumvent preemption by imposing significant costs for shielding. These shielding costs would be significant barriers to satellite antennas, yet the Commission's current proposal for calculating substantial costs appears to disregard them entirely.

7. NRTC supports the proposal of Sony Electronics Inc. to extend preemption to include off-air antennas used by DBS subscribers to receive local broadcast stations. Sony at 4. This minor modification would enhance competition in the delivery of multichannel video programming and help ensure that the spirit of the Commission's proposal is not circumvented by local zoning restrictions against related equipment such as off-air antennas.

8. NRTC agrees with the recommendation of the Satellite Broadcasting and Communications Association of America ("SBCA") that the Commission not adopt the proposed "health" justification for zoning regulations with respect to receive-only antennas. SBCA at 26. As SBCA points out, because receive-only antennas do not emit any radio frequency radiation there are no reasonable health justifications for restricting their use through zoning regulation. Id.

9. NRTC agrees with the suggestion made by several entities that the Commission should initiate a new proceeding to restrict deed covenants and homeowners' association rules which limit satellite communications. ACS Enterprises, Inc. at 2; DIRECTV at 6; Hughes Communications Galaxy, Inc. at 7. In order to promote a vibrant, competitive environment for delivery of multichannel video programming, these unnecessary restrictions need to be addressed promptly by the Commission.

III. CONCLUSION

At present, local regulations frequently create unreasonable barriers to the growth of satellite-based services. NRTC therefore supports the Commission's proposal to revise its rules to permit broader federal preemption of unreasonable zoning restrictions. This proposal should foster the growth of the satellite industry and serve to benefit consumers nationwide through increased access to satellite-delivered services.

To prevent circumvention of the intent behind the Commission's proposal, NRTC requests the Commission to amend its proposal in a few minor respects. NRTC urges the Commission to make clear that it will not tolerate imposition of unreasonable restrictions on satellite antennas, including permit costs and unnecessary procedures for consumers, shielding requirements and off-air antenna restrictions. In addition, the Commission should not allow local zoning authorities to unreasonably


limit receive-only satellite antennas by espousing health justifications which are entirely unwarranted due to the lack of radio frequency emissions from receive-only satellite antennas.

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative urges the Commission to consider these Reply Comments and to revise its rules in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL RURAL
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